FILED
DEC 12 19
HAROLD B. WILLEY

IN THE

Supreme Court of the United States

OCTOBER TERM, 1955.

No. 485 //

UNITED STATES GYPSUM COMPANY,
Appellant,

vs.

NATIONAL GYPSUM COMPANY, ET AL.,
Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA.

BRIEF IN OPPOSITION TO MOTIONS TO AFFIRM.

BRUCE BROMLEY,
CRANSTON SPRAY,
ROBERT C. KECK,
HUGH LYNCH, JR.,
Attorneys for Defendant, United States Gypsum Company.

CRAVATH, SWAINE & MOORE,
15 Broad Street,
New York 5, New York,

MACLEISH, SPRAY, PRICE & UNDERWOOD,
134 South LaSalle Street,
Chicago 3, Illinois,

MACLEAY, LYNCH & MACDONALD,
1625 K. Street, N. W.,
Washington 6, D. C.,
Of Counsel.

INDEX.

PAGE

I. The Contentions That the Questions Presented Are So Unsubstantial as Not to Warrant Further Consideration by This Court Are Without Merit..... 2-9
   A. Hartford-Empire 2
   B. Federal Rules of Civil Procedure..... 4
   C. Title 35, U. S. C. Sec. 271(d)..... 6
   D. Ruling on Misuse and Purge Without Evidence 7

II. The Reasons Urged for Affirmance Are Untenable. 9-14
   A. Basic Purposes of Decree of May 15, 1951... 9
   B. Appropriate Remedy 13
   C. Trial Court's Discretion..... 14

Cases Cited.

Besser Manufacturing Co. v. United States, 343 U. S. 444 (1952) 14

Federal Communications Commission v. RCA Communications, Inc., 346 U. S. 86 (1953) 3, 4

Hartford-Empire Co. v. United States, 323 U. S. 386, 409 (1945) 2, 3, 4, 11, 13

Henry v. A. B. Dick Company, 224 U. S. 1 (1912)..... 5

Hughes v. United States, 342 U. S. 353 (1952)..... 10

United States v. International Harvester Co., 274 U. S. 693 (1929) 10

United States v. United States Gypsum Company, 340 U. S. 76 (1950)..... 14

Walsh v. Albert Wahle Co., Inc., 25 F. 2d 350 (D. C. E. D. N. Y. 1928)..... 5

Statutes and Rules Cited.

Title 35 U. S. C. Sec. 271(d) 6
Federal Rules of Civil Procedure, Rule 8 ..... 4, 6
Federal Rules of Civil Procedure, Rule 52(a) 4
Revised Rules of Supreme Court of the United States (Rule 16.3) 1

Miscellaneous Citations.

Hartford-Empire Decree filed October 31, 1945 (Par. 16(c)) Civil Action No. 4426, U. S. Dist. Ct. N. D. Ohio, W. D. 3
Final Report and Account of Operations of Receiver, filed December 20, 1945, Civil Action No. 4426, U. S. Dist. Ct., N. D. Ohio, W. D. 3
Transcript Preliminary Hearing June 9, 1953 8
United States Gypsum Company Brief, This Court, October 1950 Term, Case No. 30 14
Yale Law Journal, Vol. XIX, p. 231, Waiver of Tort and Suit in Assumpsit 5

IN THE

Supreme Court of the United States

OCTOBER TERM, 1955.

No. 485.

UNITED STATES GYPSUM COMPANY,

Appellant,

vs.

NATIONAL GYPSUM COMPANY, ET AL.,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA.

BRIEF IN OPPOSITION TO MOTIONS TO AFFIRM.

Pursuant to Rule 16.3 of this Court, appellant, United States Gypsum Company (USG), files this brief opposing the motions to affirm which have been filed herein.*

---

* Four corporate appellees have filed motions to affirm: National Gypsum Company (National), Certain-teed Products Corporation (Certain-teed), Newark Plaster Company (Newark) and Ebsary Gypsum Company, Inc. (Ebsary). "Appellees", as used in this brief, shall mean the four appellees filing these motions. Reference to National's and Certain-teed's motions will be "Natl." and "Cert.", respectively, followed by the appropriate page number. Newark's and Ebsary's joint motion merely adopts the argument in National's motion and will not be further referred to. For convenience, appellant's Jurisdictional Statement will be referred to as "J.S." and the Jurisdictional Statement Appendix as "J.S.A."

I.

THE CONTENTIONS THAT THE QUESTIONS PRESENTED ARE SO UNSUBSTANTIAL AS NOT TO WARRANT FURTHER CONSIDERATION BY THIS COURT ARE WITHOUT MERIT.

A. Hartford-Empire.

Nothing said in the motions to affirm detracts in any way from appellant's point (J. S. 20-22) that a substantial question exists in the conflict between the decree below and this Court's ruling in *Hartford-Empire.*•

It is incorrect to say, as appellees do, that in *Hartford-Empire* this Court provided for an injunction against infringement claims for the pre-decree period (Natl. 17, Cert. 20). A reference to the citation given (323 U. S. at p. 419) will show that what this Court said was that an injunction should go against the further prosecution of infringement suits "pending at the date this suit was brought."

The conspiracy of *Hartford-Empire* was to monopolize the glass industry by combining most of the patents on glass and by inviting or forcing into the conspiracy, by harassing infringement litigation, nearly all the manufacturers of glass. Harassing patent suits of that type have no counterpart in this case. There were no USG infringement suits pending when the United States brought its antitrust action against the gypsum industry in 1940. Appellees have not urged that the suits brought by USG from 1917 to 1928, which originally established the validity and infringement of USG's patents, were harassing suits. The situation here is exactly like that of Hartford-Empire's co-defendant licensees who were required to pay for the use they made of the Hartford-Empire patents. The *Hart-*

• *Hartford-Empire Co.* v. *United States*, 323 U. S. 386 (1945); 324 U. S. 570 (1945).

ford-Empire final decree, in enjoining infringement suits for prior use of patents, expressly excepted therefrom any such attempted recovery "against any other corporate defendant."*

It can make no difference that the defendant licensees in *Hartford-Empire* had paid royalties and were not infringers (Natl. 17-18, Cert. 20-21). The royalties collected were earmarked and could have been returned easily had this Court determined that because of prior misuse Hartford was not to be paid for use of its patents *pendente lite*. But there a procedure was approved which permitted Hartford-Empire to obtain in excess of $7,000,000** of the royalties paid the Receiver, whereas in this case the District Court has denied USG the right to seek compensation for the actual use of its patents during a similar period.

The contention that the "teaching in the *Hartford-Empire* case" was but an alternative base, since the District Court's decision was also bottomed on the "practical and legal situation in the case," likewise is without merit (Natl. 17, Cert. 19). A reading of the court's opinion clearly shows that the "practical and legal situation" which the court found in this case was premised upon and dictated by the District Court's misunderstanding of the teaching in *Hartford-Empire* (J. S. A. 48-51).

Furthermore, neither in the findings of the District Court nor in its decisions are the facts that constitute that allegedly justifying "practical and legal situation" given definition or precision. Recently in *Federal Communications Commission* v. *RCA Communications, Inc.*, 346 U. S. 86 (1953), this Court ordered a case remanded to the Fed-

* Par. 16(c) of *Hartford-Empire* Final Decree filed October 31, 1945 in Civil Action No. 4426, U. S. Dist. Ct. N. D. Ohio, W. D.

** Final Report and Account of Operations of Receiver of Hartford-Empire Company (p. 5) filed 12/20/45 in Civil Action No. 4426, U. S. Dist. Ct., N. D. Ohio, W. D.

eral Communications Commission because it had not "sufficiently laid bare its mind to enable us [the Supreme Court] to perform our reviewing function." (346 U. S. at p. 95). Although the Commission, in its decision, had contended that beneficial effects would flow from its action, it had done so only "in an abstract sterile way" (*Ibid.* at p. 94). If review by this Court of the discretion of an expert commission requires that the agency to some extent lay bare its mind, a no less considerable *quantum* of disclosure would seem to be required of district courts (Rule 52(a), Federal Rules of Civil Procedure).

The failure of the court below to relate its conclusion to the facts, practical or otherwise, in this case is simply explained. The events that underlie the final decree of May 15, 1951, and the appealed-from decree of December 9, 1954, do not support the conclusion (J. S. 21-22). Actually the practical and legal situation in this case argues for reversal, not affirmance, of the judgment below. Proscription by the District Court of the USG compensation suits would seem to be relief, therefore, of a kind that this Court has said may not be granted. It is, in short, an illegal penalty, imposed "in the guise of preventing future violations" of the Sherman Act. (*Hartford-Empire Co.* v. *United States*, 323 U. S. 386, 409.)

B. Federal Rules of Civil Procedure.

In referring to the substantial question involving the Federal Rules of Civil Procedure, particularly Rule 8 thereof, appellees adopt an error of the District Court and argue that the counts of the pending suits, other than those based on the voided license agreements, were but an indirect way of attempting to force recovery which it was the purpose of the final decree to prevent (Natl. 18-19, Cert. 22-23). USG's suits were solely to recover compen-

sation for the actual use of its patents, on whatever theory the court might find appropriate. It is incorrect to say that the suits were for royalties unpaid under the voided license agreements and that all counts were for sums computed on the contract base for royalties (Natl. 4-5, 19; Cert. 5, 23). The recovery was for actual use of the patents. The reasonable value of that use was the royalty rate established by the parties themselves, not only in the voided contracts but also in the license contracts entered into under the May 15, 1951 decree, where the applicant licensees could have requested the court to establish reasonable royalties had they thought the proffered rate was unreasonable.

The claim that remedies available for patent infringement are wholly statutory and have no common law basis, and that *quantum meruit* cannot lie for infringement is irrelevant (Natl. 19, Cert. 23). In its pending suits USG does not seek a *quantum meruit* recovery for infringement of its patents, but rather for a use of its patents under circumstances from which the law would imply a promise to pay.* A patent is a property right. At common law a promise to pay is implied by law where the use of another's property is made under circumstances warranting it. The District Court ruled that the *quantum meruit* counts are "proper and prosecution thereof should not be en-

* There is, of course, authority for the proposition that a patentee may waive the tort and sue in assumpsit for the money (*Henry* v. *A. B. Dick Company*, 224 U. S. 1, 14 (1912); *Walsh* v. *Albert Wahle Co. Inc.*, 25 F. 2d 350 (D. C. E. D. N. Y. 1928); Waiver of Tort and Suit in Assumpsit, Yale Law Journal, Vol. XIX, p. 231). In the *A. B. Dick* case the court said (p. 14): "That the patentee may waive the tort and sue upon the broken contract, or in assumpsit, is elementary, * * *", but pointed out that in such a case a Federal court would have no jurisdiction unless diversity of citizenship existed, saying: "This would be so although the damages for a breach would be measured by the loss resulting from the infringement." In each of the USG compensation suits the District Courts, of course, have diversity jurisdiction.

joined" (J. S. A. 51) except for the continued misuse ruling which, we submit, the court erroneously applied.

Appellant does not urge, as appellees suggest, that because of Rule 8 the District Court should have disregarded its pleading on the contracts (Natl. 18, Cert. 23). The District Court's error was in denying to appellant the right given to it under Rule 8 to plead alternative, inconsistent counts so as to set forth its claim in the light of different legal theories, and in ruling that the inclusion of a count on the proscribed agreements barred recovery on other appropriate theories (J. S. 22-24).

C. Title 35, U. S. C. Sec. 271(d).

Appellees misunderstand appellant's point that a substantial question arises in the conflict between the decree of December 9, 1954, and the public policy now conclusively established by the recent codification of the patent laws (Natl. 19-22, Cert. 24-26). They rely on the District Court's reasoning in its memorandum filed June 30, 1955, on the denial of USG's motion for new trial, that it could not be possible that Congress intended by paragraph 271(d) to give a patentee a protection superior to the broad public policy of the Sherman Act, or to nullify the power of a court to effectuate the purposes of an antitrust decree.

No such claim was ever made by appellant. It was never suggested that the statute intended to give immunity to a patentee against operation of the patent misuse doctrine. USG's contention is, rather, that since it is the declared public policy that the mere bringing of a patent infringement suit is not misuse, then *a fortiori* allegations in such a suit of claims on a license agreement (which *inter alia* is a grant of immunity from a suit for infringement) does not and cannot constitute patent misuse (J. S. 24-25).

The appellees also err in adopting the District Court's

conclusion that since USG was not "otherwise entitled to relief" the statute could have no application. Who knows whether or not USG was otherwise entitled to relief? That is an issue in the Federal district courts in Iowa, New Jersey and New York.* Certainly the District Court cannot hold in this proceeding that USG was not "otherwise entitled to relief" without the benefit of any evidence whatsoever as to the pertinent 1948-1951 period.

D. Ruling on Misuse and Purge Without Evidence.

National's motion (p. 22) seeks to justify its free use of USG's patents for a period of almost forty months** by reliance upon the District Court's findings and conclusions to the effect that USG had not purged its misuse of patents during this period. It recognizes that there is a pertinent question as to whether or not the trial court could have decided this question of purge as a matter of law and without the taking of any evidence.

In its argument National follows the erroneous course of the District Court in ignoring the facts that the evidence on which the adjudication of antitrust violation in this case was predicated did not extend beyond the year 1941; that there had been no price fixing under the licenses since July 8, 1941; that the pertinent period involved in USG's pending suits was from February 1, 1948 to May 15, 1951; that the 1953 petitions and USG's answers thereto, as well as USG's pending suits in the Iowa Federal Court, joined issues of fact with respect to misuse and

* The motions inaccurately state that the proceedings in the Iowa court were stayed and that National and Certain-teed "thereafter" petitioned the District Court for relief. The Iowa Federal court would have proceeded with the suits there filed, but for the filing of appellees' petitions in the court below.

** The basis for National's referring to the period from February 1, 1948 to May 15, 1951, as a "twenty-five month span" is not apparent.

purge during the pertinent period—issues as to which no opportunity was ever given for the taking of evidence; that the question of purging of patent misuse necessarily involves a factual inquiry into the circumstances of the particular case and cannot be decided as a matter of law until all of the pertinent facts are known; that USG's contentions with respect to the five facts already of record, was solely to show that there was sufficient evidence in the record, not only to preclude a conclusion against it as a matter of law, but even to resolve the purge issue in its favor; and that USG discussed these five facts with the express reservation that they were "only illustrative and not the only or exclusive facts showing purge", and not as a submission of them as the only evidence that would be offered on an actual trial of the purge issue raised by the 1953 petitions and USG's answers thereto.*

It is said that USG advances no cogent reason why this Court should review the District Court's finding that its factual claims cannot amount to a purge in law (Natl. 23). That is not the question. It is whether or not the record in this case, including the issues joined by the 1953 petitions and answers thereto, permit adjudication, as a matter of law and without the taking of any evidence, of the issues of patent misuse or purge during all or any part of the 1948 to 1951 period here involved (J. S. 4). The doctrine

* The motions chide appellant for not making an offer of proof as to its testimony showing purge. They overlook the fact that the procedure below was intended to present, in the first instance, legal points as to whether or not the court had and should take jurisdiction, and whether or not questions raised by the petitions might be disposed of as a matter of law (Transcript of Preliminary Hearing June 9, 1953, pp. 6, 8, 9, 29-31; National's original brief filed July 31, 1953, which states (pp. 67-68) that if the court cannot hold for National as a matter of law, it "should then proceed to hear evidence" on the question of purge prior to May 15, 1951). On the present state of the proceedings, then, there has been neither an opportunity for introducing evidence or proffering proof, nor any intention to waive the right to introduce evidence.

of patent misuse and purge is of relatively recent development and had its genesis in the decisions of this Court. It is not believed that this Court intended that the doctrine should serve to deprive a patentee of the right to show that patents were not being misused, or that there had been a purge of any possible prior misuse, during a period seven to ten years after the alleged misuse. Clarification of the procedure for determining such issues, as well as the extent of the doctrine, presents a substantial question for this Court's consideration.*

II.

THE REASONS URGED FOR AFFIRMANCE ARE UNTENABLE.

Apparently sensing the weakness of their argument that the questions are not substantial, appellees prematurely argue the correctness of the District Court decision. Although such matters are for a later presentation, appellant nevertheless believes that a brief reply will show that these contentions are also untenable.

A. Basic Purposes of Decree of May 15, 1951.

It is urged that the District Court's action was warranted under the inherent powers of a court of equity to amend a decree to effectuate its basic purposes and under the "broad" reservation of jurisdiction in Article X of the final decree (Natl. 8-9, 13-14; Cert. 11-16). Appellees recognize that any modification of the decree must be within the basic purposes of the decree as originally entered, but con-

* The motions show the same misunderstanding as the District Court had regarding the five purge points already of record which the appellant discussed in the court below. It would not seem appropriate to pursue the argument on these points at this stage of the proceeding. At the proper time appellant will discuss the points in sufficient detail to correct appellees' erroneous presentation of them.

veniently overlook the fact that the District Court ignores this principle by approving an amendment establishing new "rights" in the co-conspirators National, Certainteed, Ebsary and Newark, in disregard of the position of the Government and of the basic purposes of the original decree.*

This being originally a proceeding brought by the Government for alleged Sherman Act violations, and the "heart of the final decree", according to the District Court, being the adjudication in Article III of the decree that the defendant companies had acted in concert in restraint and monopolization of trade in the gypsum board industry in violation of Sections 1 and 2 of the Sherman Act (J. S. A. 44), it is obvious that the basic purposes of the final decree, as in any such antitrust proceeding, were to give the Government adequate relief to prevent agreements or understandings in the future, resulting in Sherman Act violations through license agreements or other acts or courses of action. The provisions of Articles IV, V** and VI of the decree were designed to accomplish that purpose, and no suggestion has been made that those provisions of the decree have in any way failed to do so.

Appellees cannot point to any provision of the final decree of May 15, 1951, other than Article IV, as furnishing any basis for the claim that suits brought by USG were violative of the provisions of that decree. None of the

* A court may not, under the guise of construction or implementation, add new substantive provisions which were omitted or withheld in the first instance (*Hughes* v. *United States*, 342 U. S. 353, 357 (1952); *United States* v. *International Harvester Co.*, 274 U. S. 693, 702-3 (1929)).

** The abstract of Article V in the motions is misleading (Natl. 2-3; Cert. 3). Article V enjoined defendant companies from entering into any agreement or understanding to fix prices, etc. "by patent license agreements or other acts or courses of action," and from engaging in, "pursuant to such an agreement or understanding," any of the acts or practices listed in the motions' footnotes as (b), (c), (d) and (e) (J. S. A. 7).

injunctive provisions in any way prohibited USG from recovering for actual use of its patents, and the compulsory licensing provisions included in the decree assured USG a reasonable compensation for such use (Articles V and VI, J. S. A. 7-10). The District Court conceded that Article IV does not, either expressly or by fair implication, cover the counts in USG's pending suits other than Counts I and II, and that if the other counts are to be enjoined it must be by modification of the decree (J. S. A. 42, 77).

Nor was the amendment to the final decree necessary or appropriate to carry out this Court's direction that the decree should "cure the ill effects of the illegal conduct" and that "the conspirators should, so far as practicable, be denied future benefits from their forbidden conduct" (Natl. 4, 8, 14; Cert. 4, 14). In the first place, such admonitions apply with equal force to the co-defendant licensees as to the licensor. Moreover, the actual use of the patents *pendente lite*, and the payment of a reasonable compensation for such use, have no connection either with curing the ill effects of past illegal conduct or denying future benefit from forbidden conduct, as this Court recognized in *Hartford-Empire* (J. S. 20-22).

The Government, the sole spokesman for the public interest and the only party plaintiff in this case, has significantly stated* that it takes no position as to whether USG's alternative claims for recovery on a *quantum meruit* basis or for infringement are barred by the final decree,

* Appellees criticize appellant's statement of the Government's petition; they quote only the first part of it dealing with Counts I and II of the pending suits, and omit the language regarding the *quantum meruit* and infringement counts (Natl. 6; Cert. 6, 22). The Government's petition refers to the *quantum meruit* and infringement claims as "alternative claims" and avers (p. 3): "With respect to the alternative claims set forth in the aforesaid actions, your petitioner takes no position as to whether such alternative claims are barred by this Court's final decree of May 15, 1951, or as to whether this Court should enter an order enjoining USG from prosecuting such alternative claims."

or as to whether this Court should or should not enter an order enjoining prosecution of such alternative claims. If the Government believed that a modification of the decree to enjoin prosecution of the *quantum meruit* and infringement counts were necessary or appropriate to effectuate the basic purpose of the decree, or to protect the public interest, there is no doubt but that it would have been before the District Court vigorously urging that the decree be so modified.*

Nor can it be successfully claimed that the District Court's action could be justified by the reservation contained in Article X of the decree. That reservation was not a "broad" one, as the appellees contend. In fact, the reservation for making such orders as may be "necessary or appropriate (1) for the construction or carrying out of this decree, and (2) for the enforcement of compliance therewith" is a relatively narrow reservation as a comparison with similar provisions in other antitrust decrees will show.**

---

* Judge Cole's dissent was not, as appellees claim, primarily because the United States can be the sole spokesman for the public interest (Natl. 2, fn.). He dissented from the Findings, Conclusions and Decree entered December 9, 1954, on the ground that the petitions should be dismissed "for lack of jurisdiction" (J. S. A. 79, 81). In his dissenting opinion he states (J. S. A. 60-61): "Just why this court, under the circumstances, should feel called upon, in view of the Government's position, to restrain prosecution of the pending suits in the several district courts and take upon itself the adjudication of the controversy between the defendants when that controversy involves issues, such as the right to recover under *quantum meruit* or infringement, as alleged, when the Government as the sole protector of the public interest in litigation of this character does not join the petitioners in such request for this court to do so, but by inference at least suggests that it is beyond the scope of the decree handed down in these proceedings, I do not appreciate."

** This falls far short of a reserved jurisdiction "to take further action, if experience thereafter should make such necessary or advisable, fully to effectuate the purposes of destroying the monopoly and conspiracy and denying the fruits thereof" (Natl. 6-7; Cert. 7).

It is contended that the December 9, 1954 modification of the final decree merely made explicit that which necessarily must have been implied if Article IV of the decree were to have purpose or effect (Natl. 14; Cert. 14). Such a statement is unwarranted and conflicts with the trial court's conclusion that Article IV does not, either expressly or by fair implication, cover the counts in USG's pending suits other than Counts I and II (J. S. A. 77). The action of the District Court in enjoining the pending suits, without evidence as to misuse or purge during the period involved, therefore did not effectuate the purposes of Article IV, but improperly injected into the decree a new subject matter of a purely private nature.

B. Appropriate Remedy.

The appellees' contention that the District Court's amendment is justified as being within a judicial remedy now well established in patent antitrust cases likewise is without merit (Natl. 9-10; Cert. 10). In support of this contention reference is made to *Hartford-Empire,* but there, as shown, the injunction against bringing infringement suits for use of patents prior to the entry of the decree expressly excluded such suits against co-defendant licensees. Moreover, *Hartford-Empire* established that in the absence of continued law violation *pendente lite,* compensation to patentee for the use of its patents was appropriate (J. S. 20-22).

The fact is irrelevant that it is now "often" provided in litigated antitrust decrees that patentees misusing their patents are enjoined from asserting infringement or other rights thereunder until the effects of their violations can

be shown to have been fully dissipated.* The fact remains that in other cases, as in this case, there is no such injunction. And payment of reasonable royalties was made a condition to the compulsory licensing provision in both the November 7, 1949 and the May 15, 1951 decrees.

C. Trial Court's Discretion.

The motions to affirm seek to justify the District Court's action as being within the scope of its discretionary powers which ought not to be reviewed here, and certainly not disturbed in the absence of abuse of discretion (Natl. 10-13, 15; Cert. 11-13). This very point was presented on the second appeal of this case to the Supreme Court** and the Court's answer is found in 340 U. S. 76 at p. 89 (quoted in National's motion, p. 12). There can be no justification in applying a different rule at this stage of the case.

Besser Manufacturing Co. v. *United States,* 343 U. S. 444 (1952), and the other cases cited, are not inconsistent with the Court's declaration in the *Gypsum* case (Natl. 11-13, 27; Cert. 11-13, 26). This Court has repeatedly recognized that the determination of the scope of the decree to accomplish its purpose is peculiarly the responsibility of the trial court and that there is a certain area of discretion in connection therewith, but at the same time it has never hesitated to act to correct the provisions of a decree, where it deemed such action appropriate. This Court has not felt restrained from taking such action on the ground that the trial court's power in drafting decretal provisions is one of discretion, subject only to reversal for gross abuse.

---

* Similarly, it is not persuasive that such a provision is put into consent decrees.

** Oct. 1950 Term, No. 30, Appellee USG's Br. pp. 18-20.

The motions to affirm are without merit and should be denied.

Respectfully submitted,

BRUCE BROMLEY,
CRANSTON SPRAY,
ROBERT C. KECK,
HUGH LYNCH, JR.,
Attorneys for Defendant, United States Gypsum Company.

CRAVATH, SWAINE & MOORE,
15 Broad Street,
New York 5, New York,

MACLEISH, SPRAY, PRICE & UNDERWOOD,
134 South LaSalle Street,
Chicago 3, Illinois,

MACLEAY, LYNCH & MACDONALD,
1625 K. Street, N. W.,
Washington 6, D. C.,
Of Counsel.